

388.
39

MONTANA LEGISLATIVE HISTORY

Chapter 499 19 87

Bill H 344 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) _____ c

2/9 ☒ c

_____ c

2/21 ☒ c

Date Out 2/21 ☒ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/18 ☒ c

_____ c

3/19 ☒ c

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

HOUSE BILL NO. 344

INTRODUCED BY ASAY, C. SMITH, JONES, POFF, POULSEN, WINSLOW

IN THE HOUSE

JANUARY 21, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 21, 1987

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987

PRINTING REPORT.

FEBRUARY 24, 1987

SECOND READING, DO PASS.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 97; NOES, 2.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 20, 1987

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 24, 1987

SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 26, 1987

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 2.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

APRIL 7, 1987

APRIL 8, 1987

1 House BILL NO. 344
 2 INTRODUCED BY Wm. C. Smith, Jr. Poff Barber
 3 Wm. C. Smith, Jr.

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TIME
 5 LIMITS FOR COMMENCING A MEDICAL MALPRACTICE ACTION; AMENDING
 6 SECTIONS 27-2-205 AND 27-2-401, MCA; AND PROVIDING AN
 7 IMMEDIATE EFFECTIVE DATE."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 27-2-205, MCA, is amended to read:

11 "27-2-205. Actions for medical malpractice. (1) Action
 12 An action in tort or contract for injury, a condition
 13 resulting from an injury, or death against a practitioner of
 14 the healing arts, physician or surgeon, dentist, registered
 15 nurse, hospital administrator, nursing home administrator,
 16 dispensing optician, optometrist, licensed physical
 17 therapist, podiatrist, psychologist, osteopath,
 18 chiropractor, clinical laboratory bioanalyst, clinical
 19 laboratory technologist, pharmacist, veterinarian, a
 20 licensed hospital or long-term care facility, or licensed
 21 medical professional corporation, as--the-employer-of-any
 22 such-person, based upon such-person's alleged professional
 23 negligence or for rendering professional services without
 24 consent or for an act, error, or omission in--such--person's
 25 practice,--shall causing injury, a condition resulting from

1 an injury, or death, must be commenced within the time
 2 limits provided in subsection (2).

3 (2) An action referred to in subsection (1) must be
 4 commenced within the following time limits, whichever occurs
 5 last:

6 (a) 3 years after the date-of-injury-or-3-years--after
 7 the--plaintiff--discovers--or--through-the-use-of-reasonable
 8 diligence--should--have--discovered--the--injury,--whichever
 9 occurs--last,--but--in--no-case-may-such-action-be-commenced
 10 after-5-years-from--the--date--of--injury- act, error, or
 11 omission alleged to have caused the injury, a condition
 12 resulting from the injury, or death; or

13 (b) 1 year after the injured person or decedent, or
 14 his parent, guardian, or legal representative, discovered or
 15 reasonably should have discovered that the alleged act,
 16 error, or omission caused the injury, condition resulting
 17 from an injury, or death, but in no event may an action be
 18 commenced after 5 years from the date of the injury.

19 (3) However,--this The time limitation---shall---be
 20 limitations in subsection (2) are tolled:

21 (a) for any period during which such-person-has the
 22 alleged wrongdoer failed to disclose any an act, error, or
 23 omission upon which such the action is based and which is
 24 known to him or through the use of reasonable diligence
 25 subsequent to said the act, error, or omission would have

1 been known to him;

2 (b) as to a minor, until he becomes 5 years of age or
3 dies, whichever occurs first; and

4 (c) during any period of time that a minor does not
5 reside with a parent or guardian.

6 (4) A continuing relationship between the claimant and
7 the alleged wrongdoer does not toll the limitation period
8 during the relationship.

9 (5) For purposes of this section, the knowledge of a
10 custodial parent, guardian, or legal representative of an
11 injured or deceased person is imputed to the injured or
12 deceased person during the time the injured or deceased
13 person is or was under 18 years of age."

14 Section 2. Section 27-2-401, MCA, is amended to read:

15 "27-2-401. When person entitled to bring action is
16 under a disability.. (1) If a person entitled to bring an
17 action mentioned in part 2, except 27-2-211(3), is, at the
18 time the cause of action accrues, either a minor (except a
19 minor who is the subject of a claim under 27-2-205),
20 seriously mentally ill, or imprisoned on a criminal charge
21 or under a sentence for a term less than for life, the time
22 of such disability is not a part of the time limited for
23 commencing the action. However, the time so limited cannot
24 be extended more than 5 years by any such disability except
25 minority or, in any case, more than 1 year after the

1 disability ceases.

2 (2) If an action is barred by 27-2-304, any of the
3 heirs, devisees, or creditors who at the time of the
4 transaction upon which the action might have been founded
5 was under one of the disabilities mentioned in subsection
6 (1) may, within 5 years after the cessation of such
7 disability, maintain an action to recover damages. In such
8 action he may recover such sum or the value of such property
9 as he would have received upon the final distribution of the
10 estate if an action had been seasonably commenced by the
11 executor or administrator.

12 (3) No person may avail himself of a disability unless
13 it existed when his right of action or entry accrued.

14 (4) When two or more disabilities coexist at the time
15 the right of action or entry accrues, the limitation does
16 not attach until they are both removed."

17 NEW SECTION. Section 3. Injuries, conditions
18 resulting from injuries, and deaths arising prior to
19 effective date of this act. An action referred to in
20 27-2-205(1) for an injury, a condition resulting from
21 injury, or death that occurred prior to the effective date
22 of this act must be commenced within 2 years after the
23 effective date of this act or within the time limits in
24 27-2-205(2) and (3), whichever expires last.

25 NEW SECTION. Section 4. Effective date. This act is

1 effective on passage and approval.

-End-

does not limit earnings but it does limit the amount of windfall an attorney may receive.

Rep. Mercer stated that he finds it offensive in many ways that attorneys are singled out in this bill. He asked Mr. England to give some examples from his practice of a case based on a contingency agreement where these numbers have caused him to receive less and how much less that would be and if that would change his decision to represent that person effectively. Mr. England stated that cases from his practice would not be impacted by this bill but cases he has associated with other attorneys would fall below \$150,000.00-200,000.00 range, and his fee would be well below the 40% of the first \$25,000.00 recovery. A fee on an individual case is also negotiated even after the contingency agreement is signed and the recovery has been made.

Rep. Addy stated that this bill has been criticized as being one sided and wondered how Rep. Asay would feel about an amendment in regard to fees. Rep. Asay explained that the insurance companies are able to bargain a case before hand and he felt that if there were limits then there is room to bargain. Rep. Addy pointed out that it bothers him to see defense attorneys get paid more for losing than plaintiff's attorney's get for winning. Rep. Asay closed the hearing on HB 522 by stating that the legislature is the only place we can give the plaintiff a bargaining power.

HOUSE BILL NO. 344: Rep. Asay, District No. 27, sponsor, stated that this is a bill that revises the time limits for commencing a medical malpractice action and provides for an immediate effective date. He said that it is very important to realize the seriousness of this situation.

PROPOSERS: CHADWICK A. SMITH, Montana Hospital Association, stated that one of the greatest public concerns at this time is the rising cost of medical care. This bill addresses one of the ways to keep medical costs down and it is strongly supported.

GERALD J. NEELY, Montana Medical Association, explained that the major concern of Montana physicians with respect to HB 344 is that the legislature deal with the matter of the statute of limitations for minors, by reducing the limitation period. Current law provides for the statute of limitations of minors to run after 19 years. Studies have shown a statistically-significant effect on pricing of insurance from reductions in the statute of limitations. He submitted written testimony (Exhibit A) and presented a hand out titled, The Health Care Crisis in Montana (Exhibit B).

JEFFREY H. STRICKLER, M.D., American Academy of Pediatrics, stated that this is a reasonable bill.

ROGER TIPPY, Montana Dental Association, pointed out that enactment of this revision to the medical malpractice statute of limitations should improve the tort law of Montana. He submitted written testimony (Exhibit C).

JIM ROBISCHON, Montana Liability Coalition, supported this legislation.

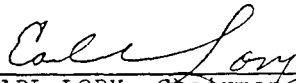
KARL ENGLAND, Montana Trial Lawyers Association, pointed out that the bill needs a lot of work. The purpose of the statute of limitations is to give people a reasonable time and a dispassionate look at the case. The major change in the bill is found on page 2, line 10, where the lines are crossed out. The bill states that the statute of limitations begins to run on the date that the act, error, or omission is alleged to have caused the injury, or a condition resulting from the injury, or death. He stated that the statute of limitations must be written very carefully and he felt that the five year date in the bill is too short.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 344: Rep. Mercer asked Mr. Neely if he had a response to Mr. England's statements. He stated that he agreed with Mr. England's suggestions on the bill.

Rep. Asay closed the hearing on HB 344.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 12:55 p.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

EXHIBIT A
DATE 2-9-87
HB # 344

MEDICAL MALPRACTICE STATUTE OF LIMITATIONS

A. SUMMARY OF POSITION - House Bill 344

The major concern of Montana physicians with respect to House Bill 344 is that the legislature deal with the matter of the statute of limitations for minors, by reducing the limitation period.

Current law provides for the statute of limitations of minors to run after 19 years. Senate Bill 160 changes that to as much as 23 years. House Bill 344 provides for a shorter limitation period for minors.

B. POLICY REASONS FOR LEGISLATIVE PROPOSAL

The general objectives of the legislation are to:

- Requiring the bringing of a legal action on behalf of minors who are injured, while the evidence is still fresh;
- Decreasing the necessity of large reserves by insurance companies, because of uncertainty as to when legal actions might be brought involving minors of tender years, thus stabilizing the insurance rates for the affected professionals;

C. SCIENTIFIC EVIDENCE OF LINK WITH DOWNWARD IMPACT ON PREMIUMS

One prerequisite to insurability is the ability to measure with certainty the time, place, and amount of harm. One basis of insurance is the theory that a combination and spreading of similar risks will render the probable loss from the risks predictable. A rate of premium payments to cover the risks can then be determined.

If a hazard cannot be calculated, a carrier must charge unusually high premiums to accumulate abundant reserves for guaranteed protection. Such is the case with respect to injury to minors, where the length of time before the carrier knows whether its exposure is present can be upwards of 19 - 25 years.

This type of legislation - shortening the statute of limitations for minors - has been shown to have a stabilizing effect on prices and thus a reduction of the uncertainty with which actuaries must deal:

"*** changes in the statute of limitations, especially those which limit the time for suits on behalf of minors and other legally disabled persons, will have a significant stabilizing effect on prices, since they will reduce the uncertainty with which actuaries must deal, and should therefore improve actuaries'

B
2-9-87
HB - 344

RECEIVED
JAN 28 1987
MONTANA MEDICAL
ASSOCIATION

THE HEALTH CARE CRISIS IN MONTANA:

Montana Physicians Speak Out

THE HARM TO THE MONTANA PUBLIC FROM A FAILURE TO ACT ON TORT REFORM

G. Brian Zins, Executive Director
Montana Medical Association
2021-11th Avenue
Helena, Montana 59601

January, 1987

Ernie

B
2-9-87
344

THE HARM TO THE MONTANA PUBLIC FROM A FAILURE TO ACT ON TORT REFORM

1. SUMMARY OF SURVEY RESULTS

In December, 1985 the Montana Medical Association sent a written opinion survey to Montana physicians concerning their beliefs and feelings concerning the problems of the cost and availability of insurance. ¹

Because of large premium increases and the fear of unjustified lawsuits within the last few years, 82% of Montana physicians have taken actions in limiting their practices -- and other steps -- which have reduced the availability of medical services in Montana and otherwise altered the medical field.

If premiums substantially increase over the next two or three years, 92% of Montana physicians intend to take further steps in the same direction:

Montana Physician Opinion		
Specific Past And Future Alterations Of Practice		
	Past Alteration	Future Alteration
Reduced Level of Insurance	6.1%	9.4%
Cancel Insurance	2.5%	2.6%
Referred More Cases	40.2%	30.6%
Increased Fees	41.9%	66.7%
Avoid high risk procedures	43.0%	43.8%
Order extra lab tests, x-rays, or other diagnostic procedures	63.1%	41.5%
Cease seeing emerg room patients	4.0%	11.4%
Cease seeing first time patients	1.1%	3.3%
Early retirement	7.7%	24.1%
Move to larger community	1.1%	5.0%
Other Methods Of Alteration	11.3%	12.9%

Since that survey was taken, premiums have continued to escalate.

¹ The Association received responses from 726 of the 1151 (63%) physicians active in the practice of medicine by the cutoff date for tabulation of the survey results.

ROGER TIPPY

Attorney At Law

BOX 543
CAPITOL CENTER
208 N. MONTANA
HELENA, MONTANA 59624

(406) 442-4451

February 9, 1987

House Judiciary Committee
Montana Legislature

Re: House Bill 344

Dear Chairman and Committee Members:

On behalf of the Montana Dental Association and the over 450 dentists practicing in Montana, I support HB 344. Enactment of this revision to the medical malpractice statute of limitations should improve the tort law of Montana. By encouraging earlier filings of potential claims, dentists can expect their insurers to deal with a somewhat more predictable future.

It has been observed that dental malpractice actions are often filed a number of years after the alleged negligent treatment. A reference work for plaintiffs' attorneys, Handling Dental Cases by Norman L. Shafler (1983), states that patients often wait a long period of time before contacting an attorney. Shafler gives several reasons, such as the patient's procrastination, the dentist's assurance that the patient will get used to a new appliance or treatment, or the referral of the patient's complaint to a local peer review committee. (Shafler, op. cit., §3.40).

Whatever the reasons, these delays in pursuing remedies contribute to a slow settlement of all the potential malpractice claims which can arise out of a year of dental practice. The table shows how in the fifth development year 19% of all asserted claims are paid out and not until the fifth year are half the asserted claims paid out. It takes 14 years to completely close out a development year -- in other words, the last claim for negligent dentistry practiced in 1986 will be paid out in 2000.

DENTISTS' PROFESSIONAL LIABILITY
PAY-OUT PATTERN
AS OF ACCIDENT YEAR 5/30/85

Development Year	Percent of Ultimate Paid Out	Cumulative Effect (%)
1st	1.0	1.0
2nd	6.0	7.0
3rd	11.0	18.0
4th	18.0	36.0
5th	19.0	55.0
6th	14.0	69.0
7th	11.0	80.0
8th	7.0	87.0
9th	7.0	94.0
10th	3.0	97.0
11th	1.0	98.0
12th	1.0	99.0
13th	.5	99.5
14th	.5	100.0
TOTAL	100.0	100.0

The pedodontists, practitioners of children's dentistry, have an especially long tail on their potential liability under current law. A 12-year old who doesn't like his braces could conceivably wait until the day he turns 23 and sue the dentist. HB 344 should restore some balance in this area.

EXHIBIT

NAME: Tim Robischod DATE: 5-9-87

ADDRESS: Hickory, NY

PHONE: _____

REPRESENTING WHOM? Member Disability Coalition

APPEARING ON WHICH PROPOSAL: HB 344

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

VISITORS' REGISTER

COMMITTEE

BILL NO. 344

DATE Feb. 9, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ACTION ON HOUSE BILL NO. 212 AND 219: Rep. Cobb moved DO PASS and he moved his amendments. He stated that HB 212 has been incorporated into HB 219. Rep. Gould asked about where the horse shows have been placed and Rep. Cobb stated that they were put into SB 49. Mr. MacMaster explained that section 1 should contain the words "cowboy polo, cutting horse, o-moc-see, or jackpot roping event". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments attached). Rep. Cobb moved HB 219, DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 219, DO PASS AS AMENDED. Rep. Darko moved that HB 212 be TABLED. A voice vote was taken and the motion CARRIED unanimously. HB 212, TABLED.

ACTION ON HOUSE BILL NO. 344: Rep. Bulger moved DO PASS. He stated there is some problem with the bill so the Medical Association of Montana has proposed a substitutive bill which he moved. Rep. Mercer asked if Mr. Neely agreed to the proposal 100% and Rep. Bulger stated that Mr. Neely wrote it. Rep. Mercer moved DO PASS AS AMENDED. Question was called on the substitutive bill. The motion CARRIED 11-2, with Rep. Brown dissenting and Rep. Gould abstaining.

HB 344 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 790: Rep. Brown moved DO PASS. Rep. Darko moved to amend on page 3, line 11, striking "250" and inserting "25". Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Brown moved DO PASS AS AMENDED. Rep. Daily stated that the bill needs limits. Rep. Brown pointed out that the bill reads "reasonable expenses" there is a two year sunset. Rep. Rapp-Svrcek moved to amend page 6, line 18, to strike "1989" and to insert "1991". Question was called and a voice vote was taken. The motion CARRIED 10-3, with Reps. Bulger, Daily and Eudaily dissenting. Rep. Mercer moved to amend section 8 by deleting it in its entirety. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments attached). Rep. Brown moved that HB 790 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED with Reps. Eudaily, Grady, Daily, Bulger, and Miles dissenting.

HB 790, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 414: Rep. Cobb moved DO PASS. Rep. Bulger stated that the subcommittee felt that the bill did not have merit. Question was called and a voice vote was taken. The motion CARRIED 9-8. HB 414, DO PASS.

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 21, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

FEBRUARY 21

19 97

Mr. Speaker: We, the committee on JUDICIARY

report HB 344

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Title, line 6.

Strike: "SECTIONS"

Insert: "SECTION"

Strike: "AND 27-2-401"

2. Title, line 7.

Strike: "IMMEDIATE EFFECTIVE"

Insert: "APPLICABILITY"

3. Pages 1 through 5.

Strike: page 1, line 11 through line 1 of page 5

Insert: "27-2-205. Actions for medical malpractice. (1)

Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, as the employer of any such person, based upon such person's alleged professional negligence or for rendering professional services without consent or for an act, error, or omission in such person's practice, shall, except as provided in subsection (2), be commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed to disclose any act, error, or

FIRST

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color

omission upon which such action is based and which is known to him or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.

(2) In an action on behalf of a minor who was under the age of four on the date of his injury or death, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or on death, whichever occurs earlier, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

NEW SECTION. Section 2. Applicability. This act applies to causes of action that arise after October 1, 1987."

not have any confidentiality at all in a youth's case.

Senator Mazurek wanted to know what the amendments will do in section 13 of the bill. Mr. McGrath stated it will allow law enforcement records of a youth to be treated like adult records.

Senator Blaylock questioned Senator Van Valkenburg if this bill will prevent kids from committing crimes. Senator Van Valkenburg said yes, this would be a strong effort to prevent crimes. Senator Blaylock said he had doubts if tougher approaches were the best way to go.

Representative Miles closed the hearing on HB 470.

CONSIDERATION OF HOUSE BILL 344: Representative Asay, House District 27, presented the bill to the committee. (Exhibit 3) He said the bill needed an amendment that will allow the provisions of this bill to be applied to any cases that have not been filed.

PROPONENTS: Gary Neely, Montana Medical Assn., supported the bill in its current form. Mr. Neely distributed amendments to HB 344. (Exhibits 4 and 4A)

Chad Smith, Montana Hospital Association, stated in 1986, Columbus Hospital in Great Falls, paid \$180,386 for malpractice insurance. He said Billings Deaconess paid \$175,000 for 253 beds for malpractice insurance; That was an increase of 34% over last year. He said in 1985, there were only 24 claims throughout the state that only totaled \$25,000. He stated that in 1986, all Montana hospitals paid a total of \$1,672,000 for insurance. He felt this bill could help, with an amendment he presented. (Exhibit 5) He presented the committee with a letter from Dr. Jeffrey H. Strickler of the American Academy of Pediatrics. (Exhibit 6) Dr. Strickler supported HB 344.

Bill Rossback, Montana Trial Lawyers Assn., said the statute of limitations starts when a child is in school because of the groups of people that can watch a child and can tell if something went wrong when the child was at the age of 0 to 4 years old. He stated that is when the doctors are most involved with a child, at the ages of 0 to 4. He said the statute of limitation is preserved until the child is 8 years old because the big damage cases are usually discovered before they are 8 years old. Mr. Rossback said his group compromised with this bill and cut the statute of limitations in half. He said he didn't agree with the Neely amendment because the statute

of limitations in a medical case is three years, not five as stated in the amendments.

Roger Tippy, Montana Dental Association, supported the bill. (Exhibit 7)

Jim Robischon, Montana Liability Coalition, supported the bill without amendments.

OPPONENTS: There were none.

DISCUSSION ON HOUSE BILL 344: Senator Mazurek inquired if Mr. Neely had a problem with the Smith first amendment. Mr. Neely said yes. Senator Mazurek asked what Mr. Neely thought about the effective date in the Smith amendments. Mr. Neely said this is a more modified version on the effective date. Mr. Neely and Mr. Rossback said they don't like the amendment to section 2.

Senator Blaylock asked how long has it been in Montana's books that one can bring suit against someone 24 years down the road. Mr. Neely said for about 100 years. Senator Blaylock asked why the premiums are so high if the claims are low. Mr. Neely said Montana has had quite a few claims; he said it is more than 24, it is around 134 claims with only 56 hospitals. He said Montana has one of the highest insurance claims rate against doctors in the nation.

Representative Asay closed the hearing on HB 344.

CONSIDERATION OF HOUSE BILL 592: Representative Harp, House District 4, introduced HB 592 to the committee. (Exhibit 8)

PROPOSERS: Jim Robischon, Montana Liability Coalition, supported the bill with amendments and gave written testimony to the committee from the International Franchise Association. (Exhibit 9) He submitted his amendments, which he called the substitute bill for HB 592. (Exhibit 10) He also handed out a Bank Bad Faith Survey to the committee. (Exhibit 11)

John R. Cronholm, Small Business Administration, supported HB 592. (Exhibit 12)

William Parker, First Interstate Bank of Great Falls, supported the bill. (Exhibit 13)

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 18

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

HOUSE BILL NO. 344

Third Reading Copy

Amend as follows:

1. Page 2, strike lines 12 through 18 in their entirety and insert in lieu thereof, the following:

"(2) The time limitations in subsection (1) are applicable to minors notwithstanding the provisions of 27-2-401, except that such time limitations are tolled for a minor:

(a) until the minor becomes 5 years of age, or dies, whichever occurs first, and

(b) during any period that the minor does not reside with a parent or guardian."

- . Page 2, line 19, strike everything following the period after the word "Applicability" and strike lines 20 and 21 in their entirety and insert in lieu thereof the following:

"An action referred to in 27-2-205 for injury or death occurring prior to October 1, 1987 must be commenced within 2 years after the effective date of this act or within the time limits in 27-2-205, whichever expires last."

SENATE JUDICIARY

EXHIBIT NO. 3

DATE March 18 1987

BILL NO. HB 344

SUMMARY OF HB344 (ASAY)

(Prepared by Senate Judiciary Committee staff)

HB344 amends the statute of limitations in which an action can be brought for a medical malpractice action, as it relates to a minor. Under current law, the statute of limitations is 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case later than 5 years from the date of injury. This bill provides that in an action on behalf of a minor who was under the age of 4 on the date of his injury or death, the 3-year period begins to run when the minor reaches his eighth birthday or on death, whichever occurs earlier, and the period is tolled (does not run) during any period during which the minor does not reside with a parent or guardian. The bill applies to causes of action arising after October 1, 1987.

COMMENTS: None.

C:\LANE\WP\SUMHB344.

MEDICAL MALPRACTICE STATUTE OF LIMITATIONS

A. SUMMARY OF POSITION - House Bill 344

The major concern of Montana physicians with respect to House Bill 344 is that the legislature deal with the matter of the statute of limitations for minors, by reducing the limitation period.

Current law provides for the statute of limitations of minors to run after 19 years. House Bill 344, as amended, provides for a shorter limitation period for minors.

The current version of House Bill 344 attempts to deal with the major problem of birth injuries, consonant with the likelihood that any birth defects will be observed by responsible people.

For purposes of insurance, the time from birth to age 4 is the critical time period.

For example, with respect to the physician-owned carrier Utah Medical Insurance Association, a significant proportion of the losses and reserves of the company are associated with the obstetrical area:

- 36% of the paid losses and reserves for known losses of the company come from obstetrical misadventures, but only 25% of the insureds are family practice doing obstetrical work or obstetricians;
- 90% of the obstetrical misadventure losses and involve birth trauma injuries

Nationwide studies have shown time and again that the bulk of all claims involving minors occurring in any one year have been reported by the seventh or eighth year.

As to any particular calendar year - according to a nationwide survey of closed medical malpractice claims undertaken by the National Association Of Insurance Commissioners - all but 6.5% of the claims against minors have been reported within seven years of the incident occurring, with only 17% of the unpaid indemnity still out at the end of that seventh year.

For this reason, the Montana Medical Association has joined with the Montana Trial Lawyers Association in supporting the current version of the bill.

Below is a comparison of the pertinent part of the original proposal and the compromise bill, and the current law (where applicable):

CLAIMS OCCURRING AFTER EFFECTIVE DATE

Statute Of Limitations Begins To Run Against Minor: Injury Claims

Current Law: At 18th birthday as to all minors

Compromise Bill: At 8th birthday for minors injured under the age of four, with running of statute stopped during time minor does not reside with a parent or guardian. At 18th birthday as to all other minors.

Original Version: At 5th birthday as to all minors, with running of statute stopped during time minor does not reside with a parent or guardian.

CLAIMS OCCURRING BEFORE EFFECTIVE DATE BUT NOT FILED BY THAT DATE
Statute Of Limitations Begins To Run Against Minor: Injury Claims

Current Law: At 18th birthday as to all minors

Compromise Bill: At 18th birthday as to all minors

Original Version: The longest of 2 years or 3 years from the 5th birthday as to all minors

The original version of the legislation does more than direct its attention to the solution of the most pressing problem - birth defects - rather it goes beyond that into limiting the rights of minors where such a solution is not warranted by the available facts.

According to one medical malpractice carrier, the effect of the compromise version would not be known for about 3 years; neither version would have an effect until the constitutionality of the legislation were settled. To the extent that that constitutional determination is made before the end of 3 years, then to that degree, the effect of the original version would be felt earlier, a marginal period of time.

B. POLICY REASONS FOR LEGISLATIVE PROPOSAL

The general objectives of the legislation are to:

- Requiring the bringing of a legal action on behalf of minors who are injured, while the evidence is still fresh;
- Decreasing the necessity of large reserves by insurance companies, because of uncertainty as to when legal actions might be brought involving minors of tender years, thus stabilizing the insurance rates for the affected professionals;

SENATE JUDICIARY
EXHIBIT NO. 4

C. SCIENTIFIC EVIDENCE OF LINK WITH DOWNWARD IMPACT ON PREMIUMS

One prerequisite to insurability is the ability to measure with certainty the time, place, and amount of harm. One basis of insurance is the theory that a combination and spreading of similar risks will render the probable loss from the risks predictable. A rate of premium payments to cover the risks can then be determined.

If a hazard cannot be calculated, a carrier must charge unusually high premiums to accumulate abundant reserves for guaranteed protection. Such is the case with respect to injury to minors, where the length of time before the carrier knows whether its exposure is present can be upwards of 19 - 20 years.

This type of legislation - shortening the statute of limitations for minors - has been shown to have a stabilizing effect on prices and thus a reduction of the uncertainty with which actuaries must deal:

"*** changes in the statute of limitations, especially those which limit the time for suits on behalf of minors and other legally disabled persons, will have a significant stabilizing effect on prices, since they will reduce the uncertainty with which actuaries must deal, and should therefore improve actuaries' predictions." 1977 Report Of The Commission on Medical Professional Liability. 1977 American Bar Association, pp. 58, note 55.

Other studies have shown a statistically-significant effect on pricing of insurance from reductions in the statute of limitations. Adams, E. Kathleen and Zuckerman, Stephen, "Variation in the Growth and Incidence of Medical Malpractice Claims," Journal of Health Politics, Policy and Law, Vol. 9, No. 3, Fall 1984, pp. 475-488.

D. CONSTITUTIONALITY OF LEGISLATION

A. LEGISLATION IN EFFECT. Twenty-one states have adopted special statute of limitation rules for minors.

Several states have amended their statutes of limitations in medical injury cases where minors are involved, typically by providing that the statute applies to a minor upon reaching a certain age.

In Indiana -- for example -- the statute of limitations for medical malpractice against physicians is 2 years, except that in the case of minors injured at birth, it extends to age eight. In Texas, the law allows minors under 12 until their 14th birthday to file. Louisiana and Utah provide that there is no special treatment for minors, so that minors are subject to the same statutory limitation period as applies to adults.

B. GENERAL CONSTITUTIONALITY. States which do not view the common action for negligence as a "fundamental right" have considered statutes of limitation and repose that bar minors' claims and have regularly found them such statutes do not offend guarantees of due process or equal protection. See, e.g. Johns v Wynnewood School Board of Education, 656 P.2d 248, 249 (Okla. 1982); Licano v Krausnick, 663 P.2d 1066, 1068 (Colo. App. 1983).

The states of Alabama, Indiana, and Utah have also upheld such limitations.

The result is often different for states which have open court provisions, especially if a "strict scrutiny" analysis is applied, as was the case in Montana prior to the passage of Initiative 30. See: Barrio v San Manuel Div Hosp., Magma Copper, 692 P.2d 280 (Ariz. 1984) (a statute which requires minors injured when below the age of seven to a bring negligence action against a health care provider by the time she reaches the age of ten violates the fundamental constitutional right to bring a cause of action for negligence.)

Because of the passage of Initiative 30, the proposed version would pose even less of a constitutional problem than those states which bar minors' claims. However, because of the existence of a constitutional prohibition on "special legislation" which is interpreted on the same basis as the "equal protection" clause in our constitution, care must be taken in drafting the legislation because of the possibility that the Montana Supreme Court would apply the "strict scrutiny" test.

That careful drafting requires that no more than the major problems posed by the current legislation be solved with the proposed legislation, e.g. that the result sought be reasonably related to the means used. The current version of the legislation does this.

Prepared by the Montana Medical Association, 2021-11th Ave., Helena, Montana 59601, G. Brian Zins, Executive Director, 406-443-4000.	STATUTE OF LIMITATIONS - MINORS 3/87
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SENATE JUDICIARY

EXHIBIT NO. 4

DATE 3-18-87

BILL NO H.B. 344

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 11/22/87
BILL NO. HB 344

AMENDMENT TO HOUSE BILL NO. 344 IS NEEDED

Section 2 of House Bill 344 must be amended to allow for application of the amendments to all cases not yet filed, regardless of when the injury or cause of action occurred. Unless such application is made, the amended statute will have practically no effect on insurance premiums for many years to come.

There is court precedence for such application. It does not amount to an illegal retroactive application of the amendment to incidents which have already occurred. In Castles v. State ex rel Montana Dept. of Highways, 187 Mont. 356, 609 P.2d 1223 (1980), the Montana Supreme Court ruled that application of a statute that modifies a procedure for exercising a vested right or for carrying out a duty does not constitute retroactive legislation. A statute of limitations is a procedural statute which does not create or eliminate vested rights. It prescribes the time within which actions to enforce vested rights must be brought. Statutes of limitations apply to any suit not yet filed.

The proposed amendment to House Bill 344 allows a reasonable time for filing suit after its effective date (October 1, 1987), being no less than 2 years, and reads as follows:

"An action referred to in 27-2-205 for injury or death occurring prior to October 1, 1987 must be commenced within 2 years after the effective date of this act or within the time limits in 27-2-205, whichever expires last."

The application of amended statutes of limitations to all suits not yet commenced is not new. It has recently been included in a statute enacted in the state of Washington.

Even if the Montana courts found the amendment to be retroactive, it would still be legal. The law of Montana allows for retroactive application of a statute if it is expressly so declared in the statute itself. Section 1-2-109, MCA, provides:

"1-2-109. When laws retroactive. No law contained in any of the statutes of Montana is retroactive unless expressly so declared."

This statute has been confirmed by the Montana Supreme Court many times, the most recent being in Barrett v. Soyland, 43 St. Rep. 712, 717 P.2d 1090 (1986), wherein the court said "For a statute to be retroactively applied such an intent must be expressly so declared by the legislature." The Montana court specifically recognizes retroactive application where expressly intended. Other Montana cases upholding the application of retroactive statutes are: Neel v. First Fed. S & L Ass'n.

M , 675 P.2d 96, 41 St. Rep. 18 (1984), Penrod v. Hoskinson, 170 M 277, 552 P.2d 325 (1976), and Harlem v. St. Highway Comm'n, 149 M 281, 425 P.2d 718 (1967). See also O'Conner v. Central School District, 509 N.Y.S.2d 472 (Dec. 11, 1986) wherein the New York Supreme Court held that a shortened statute of limitations is constitutional if it allows a reasonable period of time to file the action. The New York Court cited McGuirk v. City Sch. Dist. of Albany, 501 N.Y.S.2d 477, which found 6 months after the effective date of legislation to be a reasonable time to commence suit.

PREPARED BY
CHADWICK H. SMITH, LOBBYIST
FOR MONTANA HOSPITAL ASSOCIATION

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 3-18-87
BILL NO. H.B. 344

American
Academy of
Pediatrics



Montana Chapter
Chairman
Jeffrey H. Strickler, M.D.
1300 N. Montana
Helena, MT 59601
(406) 443-5563
Alternate Chairman
James Feist, M.D.
7 East Beall
Bozeman, MT 59715
(406) 587-5123
Secretary-Treasurer
Ralph Campbell
#4 Third Avenue W.
Polson, MT 59860
(406) 883-2232

March 17, 1987

SENATE JUDICIARY

EXHIBIT NO. 12

DATE March 18, 1987

BILL NO. HB 344

TO: Chairman, Mazurek, and Members of the Senate
Judiciary Committee

FROM: Jeffrey H. Strickler, M.D.
Chairman, Montana Chapter
American Academy of Pediatrics

RE: House Bill 344

The Montana Chapter of the American Academy of Pediatrics voted unanimously to support the reduction in the statute of limitations as put out in House Bill 344.

Certainly, it is appropriate to delay discovery of potentially handicapping conditions until after age five, but we feel that by age ten any condition for which a financial award would be indicated could be discovered by reasonable people. The physical risks of birth or brain trauma at an early age as evidenced by blindness, deafness, or cerebral palsy would clearly be evident. I know of no medical handicapping condition resulting from a problem at an early age that cannot be identified in these grade school years.

Particular concern has been expressed about the discovery of mental retardation and learning disabilities. Again, these should all be identified easily by age ten by reasonable people. Furthermore, as Vice-Chairman of Helena School District #1 and as a participant in many Individual Educational Plan meetings, I can assure you that school personnel not only are aware of these conditions but actively seek them out. School personnel in Montana are under the mandate of Federal Law 94-142 which mandates that all potentially handicapping conditions, both physical and educational, be identified and treated. Under federal law the parents and/or guardians must be informed of these findings and plans. Furthermore, by 1990 all school districts in Montana will be federally mandated to identify and treat these conditions from age three onward. Thus, discovery is not only reasonable but is actively pursued under federal mandate.

The pediatricians of Montana strongly urge a do pass to House Bill 344 with consideration of further shortening the exposure to the maximum of age ten.

ROGER TIPPY

Attorney At Law
BOX 543
CAPITOL 1 CENTER
208 N. MONTANA
HELENA, MONTANA 59624

EXHIBIT NO. 7
DATE March 18,
BILL NO. HB 344

March 18, 1987

(406) 442-4451

Senate Judiciary Committee
Montana Legislature

Re: House Bill 344

Dear Chairman and Committee Members:

On behalf of the Montana Dental Association and the over 450 dentists practicing in Montana, I support HB 344. Enactment of this revision to the medical malpractice statute of limitations should improve the tort law of Montana. By encouraging earlier filings of potential claims, dentists can expect their insurers to deal with a somewhat more predictable future.

It has been observed that dental malpractice actions are often filed a number of years after the alleged negligent treatment. A reference work for plaintiffs' attorneys, Handling Dental Cases by Norman L. Shafler (1983), states that patients often wait a long period of time before contacting an attorney. Shafler gives several reasons, such as the patient's procrastination, the dentist's assurance that the patient will get used to a new appliance or treatment, or the referral of the patient's complaint to a local peer review committee. (Shafler, op. cit., §3.40).

Whatever the reasons, these delays in pursuing remedies contribute to a slow settlement of all the potential malpractice claims which can arise out of a year of dental practice. The table shows how in the fifth development year 19% of all asserted claims are paid out and not until the fifth year are half the asserted claims paid out. It takes 14 years to completely close out a development year -- in other words, the last claim for negligent dentistry practiced in 1986 will be paid out in 2000.

DENTISTS' PROFESSIONAL LIABILITY PAY-OUT PATTERN AS OF ACCIDENT YEAR 6/30/85

Development Year	Percent of Ultimate Paid Out	Cumulative Effect (%)
1st	1.0	1.0
2nd	6.0	7.0
3rd	11.0	18.0
4th	18.0	36.0
5th	19.0	55.0
6th	14.0	69.0
7th	11.0	80.0
8th	7.0	87.0
9th	7.0	94.0
10th	3.0	97.0
11th	1.0	98.0
12th	1.0	99.0
13th	.5	99.5
14th	.5	100.0
TOTAL	100.0	100.0

The pedodontists, practitioners of children's dentistry, have an especially long tail on their potential liability under current law. A 12-year old who doesn't like his braces could conceivably wait until the day he turns 23 and sue the dentist. HB 344 should restore some balance in this area.

SUPPLEMENTAL STATEMENT IN SUPPORT OF
AMENDMENTS TO HOUSE BILL 344

TO SENATE JUDICIARY COMMITTEE

FROM CHADWICK H. SMITH

DATE MARCH 19, 1987

In the course of the hearing on House Bill 344 before the Senate Judiciary Committee on March 18, 1987, an amendment providing for application of the bill to all incidents or causes of action not yet filed in court was discussed. The Chairman invited further information expressing the attitude of insurance underwriters regarding the language of the bill and the language of the proposed amendment insofar as impact on insurance premiums is concerned.

Mr. Jim Ahrens, President of the Montana Hospital Association, contacted the Pennsylvania Hospital Insurance Company (PHICO), because it is one of the principal malpractice insurers of hospitals in Montana, and asked the head actuary, Mr. Peter Henning, how the insurance company would apply the language in each case. The response was that the present language of the bill would not afford a basis for actuarial recomputation because there would be no substantial change in risk factors for several years. He further mentioned that the company would have to recognize the change in potential liability if the proposed amendment were adopted because it would have an immediate application to risk. The extent of the application would depend on the volume of cases affected, the potential liability assessed, and the language of other provisions in the new law. The new law may require a test case to learn the Montana Supreme Court's opinion on the language before it is relied upon. The actuary was joined by Arthur Becker, the General Counsel of the company, in the conference call. Although written commitment could not be obtained without time for research, we invite the Senate Judiciary Committee to telephone these officers to confirm this information, if desired, by calling 717-766-1122.

The language offered in the proposed amendment on applicability is supported by Montana case law as shown in the legal brief submitted at hearing. The application provision has been enacted in other states with success. There is no point in enacting a law which does not operate to solve the insurance problem facing Montana hospitals now. Without immediate application, premiums will continue to escalate. In any event, the worst that could happen would be for the Montana courts to rule that the new law cannot apply to incidents which have already occurred and, of course, that is the present language of the bill anyway. We have everything to gain and nothing to lose by enacting language that addresses the problem!

Your favorable consideration of the amendments is respectfully requested.

COMMITTEE ON

DATE

Judiciary

March 18

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
J. R. BLUE	NORTH BRIDGING LAYERS	592		✓
Marlotte Marshall	WIFE	592		✓
Tim Gill	Montana Livestock & Credit	592	✓	
LIFE EDWARDS	SELF & Clients	592		✓
W. Murphy	Montana Farmers Union	592		✓
W. Robison	Mont. Disability Coalition	592	✓	
ILL PARKER	FIRST INTERSTATE BANK	592	✓	
BEN EVERETT	Self + clients	592		✓
Ray Foster	Gov. Council on Ec. Dev. & Bldg Chamber	592	✓	
Bryan Enderle	Missoula Chamber of Commerce	592	✓	
Chip Eppmann	MT Savings & Loans	592	✓	
Mary Westwood	Montana Sulphur & Chemical	592		✓
John Cronkshaw	Small Bus Admin	592	X	
Mike Lane	Self	592		✓
FRED FLANDERS	DEPT OF COMMERCE	592	✓	
Joseph Moore	Montana Peoples Action	592		✓
Bob Conner	Bozeman Chamber of Comm	344 592	✓	
Ray J. Dwyer	MT Chamber of Commerce	592	✓	
W. Brunner	Self	592		✓
Bob Pyter	MT Credit Unions League	592	✓	
Ida Maynard	Tort Claims / Admin.	592		
Philip Johnson	NFIB	592	✓	
W. J. J. J.	Mont Dental Assn	344	✓	
W. J. J. J.	HD 84	592		✓
W. J. J. J.	Mont. Disability Coalition	344	✓	
W. J. J. J.	W. J. J. J.	592		

DATE:

NAME _____

BILL #

CHAD SMITH

Brian Zins

Mont Henry, Ohio

AB 344

X W/center

Roger Achlewin

Uet. Medical Assn
INDEPENDENTS INS. Agents
ASSOC. of M_T

H34V

A large handwritten 'X' mark, likely indicating a correction or a specific point of interest on the page.

John Wetters

Marx Black Mt. N.J.

A13592

~~_____~~

Bob Buechner

Mr. Self

AB592

4

Monte Beck

Self

#B 592

BILL ROSSBACH

$$M+LA$$

#B 592

11

11

66

592

Meg Nelson for Sue Olsen.

Musculshull Agricultural Alliance

344

X

HB 592

(Please leave prepared statement with Secretary)

Senator Brown distributed a letter from James Bartlett, an attorney in Kalispell, which stated the bill will allow mothers who are not on welfare to intercept these lump sum payments. (Exhibit 4)

Senator Mazurek did not agree with the idea that all mothers could be under this bill.

Senator Halligan added to his motion, all departments can use this bill, and not just the Dept. of Revenue. The motion carried.

Senator Halligan moved House Bill 78 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HOUSE BILL 495: Written testimony was given to the committee by Linda McNiell and Mike Salvagni. (Exhibit 5) The committee waited on action on HB 495.

ACTION ON HOUSE BILL 679: Valencia Lane explained that HB 740, if passed, would make this bill's percentage of 50% of the funding going to abuse programs, change to 1%. She distributed amendments to the bill. (Exhibit 6) Senator Beck moved the amendments. The motion carried. Senator Beck moved HB 679 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HOUSE BILL 283: John McGray distributed amendments to HB 283. (Exhibit 7) Senator Mazurek wanted to clarify that the bill still makes a parent notify the other if he/she is moving a child's residency to another state, and the parent that receives the notice must give written consent. Senator Mazurek said the bill does say it is for joint custody cases and non-joint custody cases.

Senator Bishop wanted to know where the 30 day notice provision was. Senator Mazurek asked what happens to a parent who doesn't give a 30 day notice.

Senator Beck wanted to wait for action on HB 283 and 284. The committee will wait on action.

ACTION ON HOUSE BILL 344: Chat Smith gave written testimony to the committee. (Exhibit 8)

Senator Mazurek explained how if the committee supports one side of this issue, the committee loses several groups on the other side, and visa versa. Senator Mazurek thought the Neely amendments were too narrow.

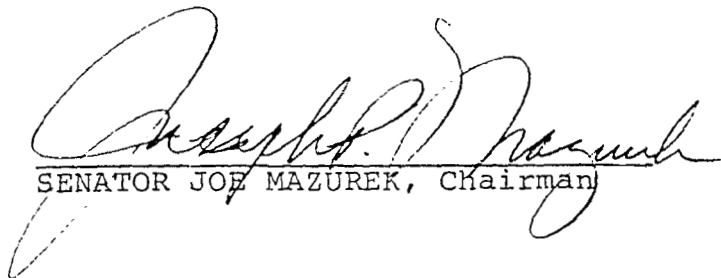
Ms. Lane said if the bill is passed, it will limit the time period to bring a suit by a substantial amount. She said if damage occurred at 4 years of age, by the time the 4 year old has grown to know that he has cause to sue, the statute of limitations has run out. Senator Mazurek stated the law says a parent can't bring a suit against the hospital on behalf of the child.

Senator Halligan moved on page 2, line 12, the statute of limitation provision include that a child's statute of limitation can start when the child turns 8 years of age. (See Standing Committee Report, amendments 2 and 3) The motion carried.

Senator Brown moved to have the bill be retroactive. The motion carried.

Senator Brown moved HB 344 BE CONCURRED IN AS AMENDED. The motion carried with Senator Halligan voting no.

ADJOURNMENT: The meeting adjourned at 12:10 p.m.


SENATOR JOE MAZUREK, Chairman

mh

STANDING COMMITTEE REPORT

SENATE

March 19 1987

DISSENT

committee on SENATE JUDICIARY

under consideration HOUSE BILL No. 344

~~third~~ reading copy (blue)
color

Revise time limits for medical malpractice actions.
Asay (Mazurek)

report as follows: That HOUSE BILL No. 344
be amended as followed:

1. Title, line 7.

Strike: "AN"

Following: "EFFECTIVE"

Insert: "FOR RETROACTIVE"

Following: "APPLICABILITY"

Strike: "DATE"

2. Page 2, lines 12 through 13.

Strike: subsection (2) in its entirety

Insert: " (2) The time limitations in subsection (1) are applicable to a minor who was under the age of 4 on the date of his injury or death notwithstanding the provisions of 27-2-401, except that such time limitations are tolled for a minor:

(a) until the minor becomes 8 years of age, or dies, whichever occurs first; and

(b) during any period that the minor does not reside with a parent or guardian.

3. Page 2, line 19 through 21.

Following: "Applicability."

Strike: the remainder of line 19 through line 21

Insert: "(1) An action referred to in 27-2-205(2) for injury or death occurring prior to October 1, 1987, must be commenced within 2 years after the effective date of this act or within the time limits in 27-2-205(2), whichever expires last.

(2) This act applies retroactively, within the meaning of 1-2-109, to causes of action that arose prior to October 1, 1987."

AND AS AMENDED
BE CONCURRED IN

KMK

Senator Mazurek

Chairman.

3-19-87
5:36
24

3-24-87

SENATE

DATE

2:03

TIME

344

House Bill

DEMAN: I MOVE TO AMEND

No.

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reading copy () as follows:

Color

PENDING SENATE JUDICIARY STANDING COMMITTEE REPORT, DATED MARCH 19,

Amendment No. 2.

Make: Insert in its entirety.

Text: "(2) Notwithstanding the provisions of 27-1-401, in an action for death or injury of a minor who was under the age of 4 on the date of his injury, the period of limitations in subsection (1) shall run when the minor reaches his eighth birthday or dies, whichever occurs first, and the time for commencement of the action shall be tolled during any period during which the minor does not reside with a parent or guardian."


Senator Mazurek

JUDICIARY

COMMITTEE

DATE _____

1/17/95

BILL NO. SB 7

SPONSOR(S)

Sin. Klampe

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14